IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4717 OF 1992

Shri Shantaram Narayan Kale,
deceased through his heirs
and legal representatives:

1A. Deepak Shantaram Kale

1B. Hemant Shantaram Kale

1C. Vilas Shantaram Kale

1D. Ajay Shantaram Kale

1E. Sunita Shantaram Kale

All residing at House No.375,
Deodhar Galli, Nashik No.1. .... Petitioners

- Versus -

1. Prabhakar Wamanrao Kulkarni

2. Chandrakant Wamanrao Kulkarni

Both residing at House No.375,
Deodhar Galli, Nashik No.1. .... Respondents

Sarvasri V.A. Sugdhare with V.A. Thorat for
the Petitioners.

Shri R.S. Vartak for the Respondents (Absent).

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 22, 2004

ORAL JUDGMENT:

1. Heard the learned Advocate for the petitioners.

None present for the respondents. Perused the records.

2. The petitioners challenge the judgment and order passed on 29-8-1992 by the lower Appellate Court in Civil Appeal No.14 of 1988, whereby the lower Appellate Court has dismissed the appeal filed by the petitioners against the decree of eviction passed by the trial Court on 29-6-1987 in Regular Civil Suit No.705 of 1985.

3. The suit came to be filed by the respondents for eviction of the petitioners from the suit premises on three grounds, namely, default in payment of rent, bona fide need of the premises for personal use and occupation of the respondents and thirdly on the ground of nuisance. The trial Court on analysis of the evidence on record rejected the contention of the respondents regarding the need of the premises as well as the accusation of nuisance, however, decreed the suit on the ground of default in payment of rent.

4. Few facts relevant for the decision are that on 24-6-1985 the respondents issued statutory notice addressed to the petitioner-tenant which was received by the petitioners on 11-7-1985. The notice was in relation to claim of arrears of rent from 1-7-1974 to 30-6-1985. Though the said notice was received by the petitioners, it was not replied nor the rent claimed was paid or tendered. The petitioners also did not prefer any application for fixation of the standard rent. The

defence of the petitioners in the suit was to the effect that the petitioners had incurred expenditure of Rs.1340/- towards tenantable repairs of the suit premises and they had therefore adjusted the arrears of rent towards the expenditure incurred by them for the said repairs and therefore the petitioners were not in arrears of rent to the respondents.

5. The Courts below on analysis of the evidence on record held that the statutory notice issued by the respondents was duly received by the petitioners, yet apart from the evidence relating to adjustment of the rent towards the tenantable repairs, no other proof regarding the payment of rent was placed on record by the petitioners. It was further held that in order to claim adjustment the respondents ought to have complied with the provision of Section 23 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the said Act"). However, the petitioners failed to comply with the said provision of law. Even in relation to the alleged expenditure for the tenantable repairs to the extent of Rs.1339/-, the Courts below have held that the petitioners have failed to place on record the cogent evidence in support of the said claim of expenditure. Indeed, the findings disclose that apart from producing the forest pass and diary for the year 1980 disclosing some expenditure to the tune of

Rs.1339/- stated to have been maintained by the petitioners, no other evidence was led by the petitioners in support of the claim of the expenditure. The learned Advocate for the petitioners sought to contend that the provision of Section 23 of the said Act were not at all attracted as the expenditure incurred by the petitioners was not in relation to tenantable repairs but it was in relation to the major repairs to the premises itself and there was no obligation upon the petitioners to comply with the requirement of Section 23 of the said Act, and the petitioners were entitled for adjustment of the entire amount considering the provisions of the Transfer of Property Act, 1882 in that regard. The contention cannot be accepted in view of the fact that it was the case of the petitioners themselves that the expenditure incurred to the extent of Rs.1339/- was towards the tenantable repairs of the premises and not otherwise. The petitioners are not entitled to raise a new plea in writ petition and that too contrary to the specific plea raised by the petitioners before the fact finding Court. The specific plea which was raised by the petitioners before the trial Court being that the expenditure was towards the tenantable repairs, it was necessary for the petitioners to establish that the petitioners had complied with their statutory obligation under Section 23 of the said Act in relation to consent of the landlord. Besides,

the proviso of sub-section (2) of Section 23 clearly restricts the right of adjustment to the extent of 1/4th of the rent payable by the tenant for the year. It is not the case of the petitioners that the adjustment was in accordance with the said proviso. Indeed, there are clear findings by the Courts below regarding failure to comply with the requirement of Section 23 of the said Act by the petitioners in relation to the claim of adjustment of the amount incurred by the petitioners for the tenantable repairs of the suit premises.

6. Apart from the findings arrived at by the Courts below being concurrent, they are based on assessment of the evidence on record and they are findings of fact. Neither the findings are revealed to be perverse nor to be contrary to the materials on record. Being so, there is no case for interference in the said findings in writ jurisdiction.

7. There being no other ground canvassed in the matter, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.